IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5084 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GANGARAM SUPADBHAI VASAVA

Versus

SURESHBHAI SUKHDEVBHAI KATARA

Appearance:

1. Special Civil Application No. 5084 of 2000

MR GM JOSHI for Petitioner No. 1

MR PRADEEP PATEL for Respondent No. 1

RULE SERVED BY DS for Respondent No. 1,4-19

MR YM THAKKAR for Respondent No. 2-3

MR PR ABICHANDANI, AGP for Respondent No. 20-21

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 26/07/2001

ORAL JUDGEMENT

What is challenged in this petition under Article

226 of the Constitution is the order dated 17.5.2000 passed by the learned Assistant Judge below application Exh. 5 in Election Petition No. 7 of 2000.

2. The election petition has been filed under Section 14 of the Gujarat Municipalities Act wherein the election of the petitioner herein to the office of the councillor of Anand Municipality is challenged by respondent No. 1. The petitioner was declared elected with 671 votes whereas respondent No. 1 herein was declared to have obtained only 670 votes. Thus, the margin was only one vote. The election of the petitioner has been challenged on various grounds. It is not necessary to refer to all those grounds as this Court does not propose to examine the case of the petitioner on merits.

3. The only ground on which this Court proposes to dispose of this petition is that ordinarily the Election Tribunal is not supposed to pass any order at an interlocutory stage which would have the effect of allowing the election petition. The learned Assistant Judge has passed the order for appointment of a Commissioner for recounting of valid ballot papers only and to submit the report to the Tribunal.

Since this amounts to a direction for recounting, the Tribunal should have first completed the trial and if the evidence to be recorded by the Tribunal shows that there was any illegality or irregularity in the election process, particularly in counting of votes, then the Election Tribunal can pass an order for recount.

4. The learned counsel for the parties have cited various authorities. It is not necessary to deal with the same as discussion of those authorities may be construed as expressing one opinion or another when the matter is still at large before the Election Tribunal. It would, therefore, be just and proper to direct the Election Tribunal to proceed with the hearing of the Election Petition at the earliest and, therefore, the interlocutory direction given by the Tribunal is required to be set aside.

5. One more fact which has weighed with this Court in adopting the aforesaid course of action is that the impugned order was passed by the Tribunal on 17.5.2000. This petition was filed on 22.5.2000 and when the petition came up for hearing on 26.5.2001, the learned counsel for respondent No. 1 appearing on caveat stated that he will file a purshis in the trial Court to the

effect that the recounting as per the order of the Court be postponed till 15.6.2001. Thereafter the hearing of this petition was adjourned from time to time and the statement on that count came to be extended from time to time.

The statement was only to the effect that the recounting as per the order of the Court be postponed. There was no ad-interim stay against the trial of the Election Petition.

The learned counsel for respondent No. 1 submits that, however, since the Election Tribunal was bound to await the report of the Commissioner as per the order dated 17.5.2000, respondent No. 1 herein (the petitioner before the Tribunal) could not have been expected to proceed with the trial.

6. In view of the fact that a period of more than one year has elapsed, and the interlocutory order of the Tribunal has for all practical purposes come to be stayed during pendency of this petition, it would be just and proper to direct the Election Tribunal at Nadiad to hear and decide Election Petition No. 7 of 2000 at the earliest. In order to ensure that no time is wasted in sending fresh intimation to the parties or to the learned counsel, it is directed that the Election Tribunal shall commence the trial of the election petition on 6.8.2001. The Election Tribunal shall hear the petition with utmost expedition and if possible, shall proceed with the trial on day to day basis. Any application for adjournments by either of the parties shall not be entertained.

7. It is only in view of the aforesaid directions that the impugned order of the Tribunal is quashed with a clarification that this Court has not gone into the merits of the rival contentions and that the Tribunal shall proceed to hear and decide the election petition in accordance with law without being influenced by the fact that the interlocutory order of the Tribunal has been set aside. The Tribunal shall endeavour to complete the trial and decide the election petition as expeditiously as possible and preferably by 31.8.2001.

Rule is made absolute to the aforesaid extent only with no order as to costs.

Writ to be sent down to the Tribunal by 30.7.01.

(M.S. Shah, J.)

sundar/-